UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES M. BENSON,)
Plaintiff,))) 2:13-cv-00713-RCJ-VCF
VS.)
DEPUY ORTHOPAEDICS et al.,	ORDER
Defendants.)
)

This case arises out of the voluntary recall of an artificial hip produced by Defendant DePuy Orthopaedics, Inc. ("DePuy"). Plaintiff brought the present class action against DePuy and others in state court. Defendants removed. Defendants have asked the Court to stay the case pending a determination by Judge Katz of the U.S. District Court for the Northern District of Ohio whether to transfer the present case to MDL No. 2197, *In re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation* (the "MDL Case") for pretrial proceedings. Plaintiff has asked the Court to remand for lack of diversity. Defendants note that the only non-diverse Defendant in the present case is a Nevada distributor, Precision Instruments, Inc. ("Precision"), who is joined as a Defendant along with the manufacturer based on negligence and strict liability theories. Defendants argue that Precision is fraudulently joined because federal law preempts state law failure-to-warn claims in cases like the present one, where it would be a violation of federal law to alter the federally mandated label in any way. *See generally PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011). Defendants argue that at a minimum the MDL judge should determine this issue, because the ruling will affect many cases and ensure a uniform

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